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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. _____.

DEL A. FEHSENFELD, JOHN WILKES, JOHN DICKERSON, IRWIN FERREIRA, PAUL DICKERSON, T. W. BEACHBOARD, GENE MEEKS, JOHN PITTMAN, EARL CHAMBERS, V. A. VANCE, MRS. J. L. JENKINS, ELI EDMISTON, MRS. JOHN DICKERSON, ZELLA MOBERLY, ELMER AMMERMAN AND OTHERS SIMILARLY SITUATED, THE INDUSTRIAL STATE BANK, A CORPORATION,
Petitioners,

vs.

IVAN WHIPPLE, ARTHUR C. BROWN, FRANK A. TAYLOR, ANDREW B. CLINE, MALLOY S. HAGEMANN, R. E. AYRAULT, WM. E. MILLER, JOSEPH H. CAUDRON, EVERETT M. WATT, A. D. WING, RAY RUSSELL, JAMES C. MANN, FOR AND IN BEHALF OF THEMSELVES AND IN BEHALF OF OTHERS SIMILARLY SITUATED,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Come now Del A. Fehsenfeld, John Wilkes, John Dickerson, Irwin Ferreira, Paul Dickerson, T. W. Beach-

board, Gene Meeks, John Pittman, Earl Chambers, V. A. Vance, Mrs. J. L. Jenkins, Eli Edmiston, Mrs. John Dickerson, Zella Moberly, Elmer Ammerman and others similarly situated, The Industrial State Bank, a corporation, Petitioners, of Kansas City (Wyandotte County), Kansas, and respectfully prays for a writ of certiorari to the Supreme Court of the State of Kansas, to review a decision and judgment rendered by the Supreme Court of Kansas, on November 8, A. D. 1952 (finally entered against your Petitioners herein after overruling their said Motion for Rehearing on December 12, 1952), the opinion of the Kansas Supreme Court affirmed a final order entered by the District Court of Wyandotte County, Kansas, Division 4, entered August 4, 1950.

OPINIONS BELOW.

The entering of the Findings of Facts and Conclusions of Law by the District (trial) Court aforesaid, as the final order therein, after overruling the Defendants' (Petitioners) Motion for a New Trial, as entered in Appellants' Abstract, p. 28, a certified copy of which is on file in this Court.

A certified copy of the opinion of the Kansas Supreme Court, together with that tribunal's order overruling Appellants' Motion for a New Trial, now on file with this Court, is presented herewith in accordance with Rule 38 of this Court.

JURISDICTION.

This application (petition) is made under Section 1257(3) of the Judicial Code as amended, Title 28, U. S. C. A., Section 2101(c), and Rule 38 of the Rules of the Su-

preme Court of the United States; also, the Constitution of the United States, applicable to the sections of that organic law and the Amendments thereto cited below as well as the Federal Statutes effectuating the application and enforcement of the United States Statutes and Judicial Rules pertinent to the instant case.

STATUTES INVOLVED.

(1) *United States*: The Federal Constitution, Article III, Section 2, Par. 2 (jurisdiction), and Article I, Section 10, Par. 1 (impairment of obligation of contract).

Also, Articles I, V, VII and XIV of the "Bill of Rights" thereto.

(2) *Kansas*: The Constitution of Kansas, being Article XII, Section 3, and Article I, Section 17 of the "Bill of Rights."

(3) *Biblical Law*: The New Testament, 1st CORINTHIANS, Ch. 6 1-8.

SUMMARY STATEMENT OF FACTS.

The issues of facts in the instant case are briefly the following:

The Argentine Baptist Church was chartered by the State of Kansas on October 21, 1885, with no property then owned, and no doctrinal limitations or implied trust as to property except, in the exact words of said charter, "to support and maintain the public and social worship of Almighty God in the said Argentine Baptist Church" and "towards such ends to purchase, receive, hold and transfer property, real, personal and mixed, for church pur-

poses, as authorized by the Constitution and laws of the State of Kansas in such cases."

Thus, such charter met the requirements of the Kansas Constitution (Article XII, Section 3) requiring church property to be held by Trustees only, at majority of the church membership's direction by congregational vote, five such trustees being named in said charter. There are no amendments nor changes to date in such instrument.

The Argentine Baptist Church adopted its own written constitution (with covenant included therein) August 26, 1946 (such being reproduced in full as an Exhibit, Appellants' Abstract, pp. 30-38).

Such constitution was in force on June 20, 1950, when a minority filed the instant lawsuit, in defiance of the basic Baptist doctrine, tradition, principle, custom, practice and usage of "Arbitration" to settle intra-church controversies in God's law (1st Corinthians, Ch. 6: Verses 1 to 8). The constitution further specified (Article IV, Sec. 1) that *membership* would include only those "persons professing faith in Jesus Christ * * * whose interpretations of the Bible are in general accord with *those of the Baptist* denomination by vote (majority) of the church," covenanting to maintain its *worship, ordinances, discipline and doctrines* (Article III, Par. 3) same being fully set out 6 (a to i) of appellants' answer (Ab. pp. 11-12).

There was no requirement to affiliate with any named group, convention (State or National) or otherwise, but providing especially for *exclusion* of members (Article IV, Sec. 2).

Though the Argentine Baptist Church was chartered in 1885, the Northern Baptist Convention was not chartered until June 6, 1910, under the laws of the State of New York, while the Baptist faith goes back to New Testa-

ment pronouncements of Holy Writ (over 1900 years ago). Its stated object, then, was as follows:

> "The object of the Corporation (Northern Baptist Convention) shall be to give expression to the opinions of its constituency upon moral, religious, and denominational matters and to promote denominational unity and efficiency *in efforts for the evangelization of the world*" (mission work).

The above corporation was formed by an alignment of Regular Baptist Churches of the faith, belief, doctrines and practices of churches of the Baptist Denomination.

Then, after unanimously calling the appellant one of your petitioners herein as pastor, he accepted that position in the Argentine Baptist Church, in August, 1949. His pointed Bible preaching seemed to bring rancour to a minority of the church's members, who began to promote "revolution" against the pastor and those who loyally adhered to Baptist autonomy, democratic, congregational government and basic Baptist doctrines, etc. They even charged his vigorous preaching against SIN as an attempt to change the "customs, practices and usages" of the Argentine Baptist Church. Even when he called "Santa Claus" a myth, the minority went "to the bat" for Santa Claus as though the old saint was a "reality," holding up for "KRIS" as against CHRIST.

At the *minority's* behest, Pastor Fehsenfeld graciously called a properly announced meeting for the minority to "muster their strength." They lost in their efforts to oust their pastor. Then they hired a lawyer. He "engineered" an irregular "rump" meeting in the church basement. The minority declared the pulpit "Vacant." They rushed to the Wyandotte County (Kansas City), Kansas Court House, asked for an injunction against the pastor and the MAJORITY of their fellow-members, repudiating the

ages-old MAJORITY rule by Baptists, their democratic church government, the complete religious sovereignty of the independent local church, and every basic doctrine, tradition, tenet, principle, custom and usage including the Baptist practice of "Arbitration" to settle church differences according to God's law.

The *majority* of the members and the church's pastor became defendants in a lawsuit for about 10 days. The presiding Judge, a distinguished lawman of a faith which allows no freedom of congregational action repeatedly forbade any examination into whether the Argentine Baptist Church had been following established fundamental, basic Baptist doctrines, traditions, customs, practices and usages generally as the church's Constitution obligated them to do, in spite of the fact that the defendants' answer had so charged (Ab., p. 10, Paragraphs 4 and 5) but erroneously regard the Argentine Baptist Church as having *its own* peculiar "doctrines and customs," whether truly "Baptistic" or not.

Accordingly, the trial Judge issued a perpetual injunction, "enjoining the defendants (Appellants) from, in any manner, possessing any of the buildings or funds of the Argentine Baptist Church or having any voice or share in its affairs." This decision was based on a ruling 6 years earlier by the Kansas Supreme Court in the case of *Hughes* v. *Grossman*, (166 Kan. 315, 201 Pac. 2d 607), of which more shall be said hereafter, by which Baptist autonomy and *majority* rule was temporarily obliterated in Kansas.

The defendants (now your Petitioners) herein appealed to the Kansas Supreme Court, refused to change its ruling of six years before, nullifying Baptists' Constitutional and Biblical right to handle their own church business and property by vote of their members of the in-

dividual, local church, without outside interference, ecclesiastical or civil. The same judge, Justice Parker, in his opinion on November 8, 1952, to which objection is hereafter made herein, wrote his opinion, refusing to correct his alleged error in the *Hughes* v. *Grossman* case, *supra.*

QUESTIONS PRESENTED.

1. Is a Baptist church self-governing and independent of interference by the Civil Courts in matters purely ecclesiastical, or can Civil Courts interfere?

2. Is a Baptist church congregational in its form of government and, generally, is it governed by the MAJORITY vote of its members?

3. Is a Baptist church free to sever its voluntary affiliation with another Baptist group or "Convention"?

4. If a Baptist church has not changed its doctrine when it severs such "Convention" connection, can its members keep control of their property?

5. Are the following acts or ruling by a Civil Court or Judge violative of the American Constitutional doctrine of "Separation of Church and State"?

(a) Taking jurisdiction of a church's internal affairs?

(b) Attempting to substitute a UNANIMOUS vote instead of MAJORITY vote in a Baptist church?

(c) Issuing an injunction to prevent religious attendance and worship by a church's members?

(d) Taking property from a Majority faithful to Baptist doctrines and giving it to a *minority?*

(e) Ousting a pastor under contract, who is acceptable to the majority of that Baptist church's members?

(f) Proclaiming that the severance of a Baptist church, true to Baptist doctrines, has changed its doctrine because the members by *majority* vote, decide to disaffiliate, re-affiliate or not affiliate with a "Convention"?

6. Are not the acts or rulings set out in (5) above all violative of the guarantees set out in Articles I, V, VII and XIV of the "Bill of Rights" of the U. S. Constitution?

SPECIFICATIONS OF ERRORS TO BE URGED.

The Supreme Court of Kansas, in their opinion of November 8, 1952, erred in ignoring the following "Specifications" of trial court "errors or in acquiescing in the same."

I. The Court erred in assuming jurisdiction of the instant cause because "administrative relief" through arbitration and settlement by Baptist Custom, by the Argentine Baptist Church's Constitution and Covenant and by the rules, teachings and ordinances of the New Testament had not been tried, used nor exhausted (Error 1, Ab., p. 170).

II. The Court erred in issuing his interim orders to enforce certain unusual procedure in the conduct of the affairs and meetings of the Argentine Baptist Church by substituting his civil judicial fiat in lieu of Baptist Autonomy, and democratic self-rule of the *majority;* by a vote of the Baptist members present, and in granting any injunction, perpetual or otherwise, against the defendants and (all) those similarly situated, individually or collectively, who constituted a proper voting *majority* of the members of the Argentine Baptist Church (Error 4, Ab., p. 171).

III. The Court erred in seeking to set aside and nullify the right of conscience in religious matters of each defendant and those similarly situated (including *all* members of the Argentine Baptist Church) in violation of the "Religious Liberty" provision of the Constitution of the State of Kansas "Bill of Rights" (Article I, Section 17) (Error 6, Ab., p. 171).

IV. The Court erred in attempting to deprive each defendant and those similarly situated, of their rights of: (1) trial by jury; (2) of equal protection of the law; (3) of their property not being taken without due process of law; and (4) of not having their property taken without just compensation—*All* in violation of their guarantees under the Constitution of Kansas and of the United States of America, especially the First Amendment (Article I) in the Bill of Rights, guaranteeing Religious Freedom, and also Articles V, VII and XIV (Error 7, Ab., p. 171).

V. The Court erred in holding that a local Baptist church cannot change its Convention affiliations except by UNANIMOUS vote of the members, thereby nullifying the MAJORITY voting tradition, practice, custom and usage of Baptist churches (Error 9, Ab., p. 172).

VI. The Court erred in seeking to vitiate and/or nullify the rights of Baptists to follow the New Testament as their rule, guide and "Constitution," and to seek harmonious Biblical settlement of church disputes to advance the Cause and Kingdom of the Lord Jesus Christ by customary, Biblical Arbitration, rather than by law and through the Civil Courts (Error 13, Ab., p. 172).

VII. The Court erred in taking the defendants' interest in the funds and property (the church building, parsonage and equipment) and handing it over to plaintiffs while issuing a perpetual edict of injunctive banishment of

defendants and those similarly situated from the premises and activities and from membership in the Argentine Baptist Church forever; prohibiting any of the defendants, or those similarly situated, from ever offering themselves as members of that Church, even if, in conscience, they desired to do so, thus taking from them all liberty of action or worship (Errors 18 and 19 (combined), Ab., p. 173).

VIII. The Court erred in refusing evidence, offered by the defendants, to show the departures of the Argentine Baptist Church from those basic, general doctrines, traditions, practices, usages and customs of Baptists in spite of his ruling that the defendants' Answer contained what should *be the true principles of faith and practice by all regular Baptists,* covered by the Church's Constitution and Covenant (Error 27, Ab., p. 175).

IX. The Court erred in holding that the *minority* (the plaintiffs) owned the Church and its assets and that the *majority* (the defendants and *those similarly situated*) had no rights, but were "trespassers" on the property of the Argentine Baptist Church, taking from them the keys to the church and records, of which they were "majority" equitable owners; the Court erred in holding that he had the authority to terminate or impair the church's contract with Rev. Del A. Fehsenfeld as pastor; to recognize the illegal meeting attempting to discharge him as proper; and yet seeking to give him one month's notice with pay, yet ordering him to vacate the Church's parsonage (Errors 34 and 35 (combined), Ab., p. 176).

X. The Court erred in ordering Rev. Fehsenfeld and family from the Church parsonage at all, and he is not now pastor by any lawful act of the membership of the Argentine Baptist Church in accordance with their Constitution and/or Covenant, or its avowed doctrines, tenets, traditions, usages, and practices, as a Baptist Church; nor by

any voluntary act or acquiescence of Rev. Fehsenfeld's, who is not filling the pulpit by the Court's order and not by intent nor approval of Rev. Fehsenfeld nor any of these defendants and others similarly situated (Error 36, Ab., p. 176).

XI. The Supreme Court of Kansas erred in sustaining the Findings of Fact of the Trial Court in the face of Appellants' showing that the evidence proved the variance between the record and the Findings of Fact.

XII. The Supreme Court of Kansas erred in holding that the Trial Court had jurisdiction since administrative relief and Baptist usages of "arbitration" had been ignored by appellees, and also that the judgment and opinion both ignored appellants' guarantees under Articles I, V, VII, and XIV of the "Bill of Rights" of U. S. Constitution, as set out in abstract in motion for re-hearing and motion for stay of mandate by the Kansas Supreme Court.

The substantial Federal questions involved in the "Specification of Errors" above are:

PROPOSITION I. The Kansas Supreme Court erred in acquiescing in the Trial Judge's action in taking jurisdiction before the plaintiffs (Respondents-Appellees herein) had exhausted preliminary and/or administrative relief, in accordance with established rules, tenets, customs, practices and usages of Baptists generally, by Council and arbitration was to allow the plaintiffs to seek judicial relief prematurely, in disregard of long-established Federal and State Court rules of procedure (authorities cited in Brief attached).

PROPOSITION II. Since Article I of the United States Constitution's "Bill of Rights" guaranteeing Re-

ligious Freedom, is made applicable by United States Supreme Court decisions, through interpretation of Article XIV, it was a disregard of said Article I, by the Kansas Supreme Court, to fail to observe the inhibitions of Article I, Section 17 (Bill of Rights of Kansas Constitution), guaranteeing Freedom of Conscience to Kansas Citizens (authorities cited in Brief attached).

PROPOSITION III. The Supreme Court of Kansas further failed to observe the guarantees of Articles V and XIV of the United States "Bill of Rights," forbidding taking of property without "due process of law" by affirming a trial Court judgment brought, not by the Argentine Baptist Church, as a religious Corporation, through its legal trustees (as required by Kansas Constitution in Article XII, Section 3, thereof), but by a minority group, already defeated by customary vote of a faithful Baptist majority voting in the Argentine Baptist Church; that such ouster of majority took from them their proportionate group equitable interest in the church's property and assets in contravention of law, although no property trust, express or implied, had been violated (authorities cited in Brief attached).

PROPOSITION IV. The Kansas Supreme Court by permitting invasion of the affairs of and autonomy of the Argentine Baptist Church denied the majority members thereof (the petitioners herein) "equal protection of the law" as required by Article XIV of the United States "Bill of Rights," forbidding them the Constitutional right to introduce and present proper evidence for themselves and against the parties suing them; such as refusal to allow original wire-recordings of the meeting of March 20, 1950, introduced or to show how defendants (appellants) had "kept the faith" and Baptist doctrines and how the plaintiffs (re-

spondents) had "departed" therefrom (authorities cited in Brief attached).

PROPOSITION V. The Kansas Supreme Court erred in affirming the decision of the Trial Judge in the instant case, whereby, by his civil fiat, he struck down the sacred right of each member of the majority of the said church to worship God, at the time, place and in the manner dictated by their conscience of each, as guaranteed by Article 1 of the United States "Bill of Rights," forever separating Church and State in this republic, and even, in like manner, striking down the same blood-bought rights of the minority, making the Argentine Baptist Church over to suit the trial Judge (authorities cited in Brief attached).

PROPOSITION VI. That the Kansas Supreme Court erred in approving the Findings of Fact of the Trial Judge in the instant case, because the Trial judge willfully suppressed material evidence, properly and legally tendered, by counsel and witnesses of defendants (appellants) in open court, manifested undeniable bias, and assumed to be the judge of the law, without the facts thereby depriving them of a valuable right of a jury trial to determine the truth on the issues pleaded, all in violation of the guarantees vouchsafed in Article VII of the United States "Bill of Rights."

PROPOSITION VII. The Kansas Supreme Court erred in affirming the conduct and ruling of the trial judge, who deliberately took over the sacred, congregational business of the Argentine Baptist Church, and "fired" Pastor Fehsenfeld, who was under proper, legal, unexpired contract as pastor of said church, which included not only his services, at stated salary, but included, to the end of his contractual term (several months later), his living quarters in the said church's parsonage, from both of which he was ousted, at the Trial Judge's whim and the disgruntled,

rebellious minority's behest—all in violation of the United States Constitution, Article I, Section 10, par. 1, forbidding by law any impairment of obligation of contract (authorities cited in Brief attached).

PROPOSITION VIII. The Kansas Supreme Court, by the ruling that a Baptist Church's voluntarily severing or changing its prior "Convention" convictions, is a Change of Doctrine, is an invasion of the Religious Authority of the Baptist Church itself, Biblically and by Baptist tradition, usage and practice; it being also tantamount to the Kansas Supreme Court's arbitrarily rewriting centuries-old Baptist Doctrine, and, in effect is a gross violation of Article I of the United States Constitution, guaranteeing Religious Freedom and Separation of Church and State (authorities cited in Brief attached).

(NOTE: To prevent prolixity, the legal authorities references to the record on which your Petitioners rely will be set out in the Brief, which follows, in support of this Petition for the writ of certiorari herein prayed for; it being understood, that before the expiration of the 90 days for filing this application an extension was granted by Mr. Justice Clark, up to and including May 12, 1953.)

PRAYER.

Wherefore the Petitioners, as above herein, each for himself, respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Kansas (Cause No. 38,270), or if its mandate has gone down, also, to the District Court of Wyandotte County, Kansas (Division No. 4, Cause No. 80,410A), (required

portions of transcript of the proceedings in No. 38,270 and of the Abstract of Appellants and the Counter Absract of Appellees being already certified to this Court), and that the decision of the Kansas Supreme Court be reversed by this Honorable Court and that your Petitioners, and each of them, have such other and further relief in the premises as to this Honorable Court may seem meet and just.

PRESTON POPE REYNOLDS,
2711 So. 9th Terrace,
Kansas City 3, Kansas,
Counsel for Petitioners.

The State of Kansas, County of Wyandotte, ss.

Be it remembered that before me, a notary public in and for said State and County aforesaid, on this day personally appeared PRESTON POPE REYNOLDS, of lawful age, known to me, who, upon his oath, states that he is the attorney for the Petitioners named in the foregoing petition for writ of certiorari; that he has read the foregoing petition and the allegations are true to the extent of his knowledge and belief; and that this petition is not filed for delay; also, that he is licensed to practice before the Supreme Court of the United States.

/s/ PRESTON POPE REYNOLDS
Preston Pope Reynolds.

Sworn to and subscribed before me on this 8th day of May, A. D. 1953.

/s/ JUSTUS K. BAIRD
Notary Public.

(SEAL) My Commission expires: SEPT. 9 1955

("Copy" of original on file.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. _____.

DEL A. FEHSENFELD, JOHN WILKES, JOHN DICKERSON, IRWIN FERREIRA, PAUL DICKERSON, T. W. BEACHBOARD, GENE MEEKS, JOHN PITTMAN, EARL CHAMBERS, V. A. VANCE, MRS. J. L. JENKINS, ELI EDMISTON, MRS. JOHN DICKERSON, ZELLA MOBERLY, ELMER AMMERMAN AND OTHERS SIMILARLY SITUATED, THE INDUSTRIAL STATE BANK, A CORPORATION,
Petitioners,

vs.

IVAN WHIPPLE, ARTHUR C. BROWN, FRANK A. TAYLOR, ANDREW B. CLINE, MALLOY S. HAGEMANN, R. E. AYRAULT, WM. E. MILLER, JOSEPH H. CAUDRON, EVERETT M. WATT, A. D. WING, RAY RUSSELL, JAMES C. MANN, FOR AND IN BEHALF OF THEMSELVES AND IN BEHALF OF OTHERS SIMILARLY SITUATED,
Respondents.

In the Matter of the Supreme Court of Kansas Issuing a Ruling Depriving Baptist Churches of Their Autonomy and Promulgating a Change in Baptist Doctrines, by Affirming a Trial Court's Decision Violative of Several Articles of the United States Constitution's "Bill of Rights."

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

PROPOSITION I. The Kansas Supreme Court erred in acquiescing in the Trial Judge's action in taking juris-

diction before the plaintiffs (Respondents-Appellees herein) had exhausted preliminary and/or administrative relief, in accordance with established rules, tenets, customs, practices and usages of Baptists generally, by Council and arbitration was to allow the plaintiffs to seek judicial relief prematurely, in disregard of long-established Federal and State Court rules of procedure.

Argument and Authorities.

The respondents were suspended or "on probation" by virtue of their alleged violation of the church covenant (Argentine Church Constitution), especially Article III, par. 2 (Ab. pp. 31-32), by action of the majority taken (by vote of 81 to 28) as set out in Exhibit 12 (Ab. pp. 48-49). Thus, the respondents (plaintiffs) were faced with the necessity of letting their "disciplinary action," according to basic Baptist rules, customs, usages, practices, etc., run its course. They might not eventually be excluded after hearings before the church.

Their premature filing of suit, therefore, was "out of order," at the time filed, as, by both Federal and State rules of civil procedure of long standing, the Trial Judge could not exercise jurisdiction, while the church's customary routine was yet to be effectuated. The action of the Kansas Supreme Court, in condoning, by affirmation, the Trial Judge's hearing of the case, instead of dismissing the application for injunction, was contrary to law, no grounds for injunctive relief then existing. He was forcing his authority upon the church's majority membership.

Even as recently as March 8, 1952, seven months before the instant case was argued before the counsel for the petitioners in the instant case, the Kansas Supreme Court ruled in *Zeidler* v. *Kinghts of Columbus, a Corpora-*

tion, (____ Kan. ____), held that courts will not interfere and take jurisdiction of cases, involving the discipline, expulsion or suspension of members of societies unless and until such aggrieved member has exhausted the remedies available to such member. Other cases, in Kansas, so holding are: *Reno Lodge* v. *Grand Lodge*, 54 Kan. 73, 37 Pac. 1003; *Moore* v. *National Council*, 65 Kan. 453, 70 Pac. 352; *Modern Woodmen* v. *Taylor*, 67 Kan. 368, 71 Pac. 807; *Flynn* v. *Brotherhood of Railroad Trainmen*, 111 Kan. 415, 207 Pac. 829; *Wichita Council* v. *Security Benefit Ass'n*, 138 Kan. 841, 28 Pac. 2d 976; *Radio Station KFH & Co.*, v. *Musicians Ass'n, Local No. 297*, 169 Kan. 596, 220 Pac. 2d 199; and other decisions therein cited.

King v. *Smith*, 106 Kan. 626:

> "Controversies over theological questions, or matters of discipline, such as the expulsion of members, are matters to be determined by the members of the congregation and the civil courts will not interfere." "The Baptist Church is an independent and self-governing organization administering its own government by a majority of its members" (p. 626).

American Jurisprudence, Vol. 45, p. 753, Par. 42:

> "Where a tribunal is provided by a religious society, all remedies within the society with respect to religious rights must *first be exhausted* before there can be a resort to Civil Courts" (*Hatifeld* v. *DeLong*, 156 Ind. 207, 59 N. E. 483; 49 L. R. A. 399; 35 L. R. A. 924): *Carter* v. *Popineau*, 222 Mass. 464; 51 L. R. A. 751.

Hughes v. *Grossman*, 166 Kan. 330:

> "Controversy over theological questions and matters ecclesiastical in character are to be determined by the authorities of the particular church involved * * * Ordinarily the *Civil Courts* are without jurisdic-

tion to review or control the decision of duly constituted church authorities" (Justice Parker) (the same Justice who wrote the opinion in the instant case herein complained of).

100 Am. State Reports 737; *King* v. *Smith*, 106 Kan. 624:

> "A Civil Court has no power to require a church court to observe the usual incidents of trial, such as the formulation of charges and notice."
>
> "Civil Courts will not enter into the consideration of church doctrine nor discipline" * * *
>
> "Every person entering a church organization covenants to conform to its rules and civil courts are without jurisdiction to supervise or control."

Kennesaw Free Baptist Church of Kennesaw, Nebraska, v. *G. S. Latimer et al.*, 8 A. L. R. 98; 174 N. W. 296—Decision by Nebraska Supreme Court (also, cited in 174 N. W. 296).

The United States Supreme Court has ruled:

> "In the absence of any breach of trust, express or implied the majority rule prevails in independent and congregational societies which have no organic connection with ecclesiastical bodies (like Congregational or Baptist denominations) not only in the religious domain * * * but over civil property and property rights." *Watson* v. *Jones*, 13 Wall. 679.

Even after suit was filed in the instant case, the defendants (petitioners herein) offered Baptist arbitration to plaintiffs (respondents herein) though they were suspended, as members of the Argentine Baptist Church, pending disciplinary action (Ab., p. 51). Said offer was acknowledged (admission 17) and refused as not being "material" (Ab. p. 57). See also Ab. p. 97 (469)—p. 98 (471) and Ab. p. 106 (506)-107 (507).

PROPOSITION II. Since Article I of the United States Constitution's "Bill of Rights" guaranteeing Religious Freedom, is made applicable by United States Supreme Court decisions, through interpretation of Article XIV, it was a disregard of said Article I, by the Kansas Supreme Court, to fail to observe the inhibitions of Article I, Section 17 (Bill of Rights of Kansas Constitution), guaranteeing Freedom of Conscience to Kansas Citizens.

Argument and Authorities.

The "conscience" clause of the Kansas Constitution (Article I, Section 17), referred to above (being also quoted as part of Specification of Error 8, Ab. p. 171), reads as follows:

> "The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; *nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship* * * *."

The above guarantee of Religious Freedom to EVERY Kansas citizen and inhabitant was written into the organic law by adoption by the Legislature of Kansas, following Kansas admission to the Union about 1860.

It was done to carry out the spirit and guarantees of Article I of the United States Constitution. Several years later, by United States Supreme Court *fiat*, such prerogative of Religious Freedom and Separation of Church and State was made compulsory upon the State of Kansas and all others of the American Union by the XIV Amendment to the United States Constitution.

The ruling of the Supreme Court of Kansas, in the instant case, was first promulgated in the case of *Hughes*

v. *Grossman*, 166 Kan. 325, 201 Pac. 2d 670 (at the beginning of the Syllabus of the Court, in the opinion in the instant case, herein complained of) struck down the Religious Liberty of Baptists and other churches having the congregational form of church government. It was by means of the said *Hughes* v. *Grossman* ruling (also written by Kansas Supreme Justice Parker, who copied it in the instant case) that the Trial judge herein further enslaved the otherwise free men, women and children of Kansas.

The very so-called "perpetual injunction," issued by the trial judge (Ab. pp. 25-26) in the instant case was a complete nullification of the right of conscience of both the plaintiffs (Respondents) and the defendants (Petitioners) herein, giving them, though Baptists, orders as to what they should or should not do, in the future, as to their religious affiliations, though they are free born American citizens, protected by the United States "Bill of Rights," by which they seek protection and redress by resort to the gracious consideration of this Honorable Court, the greatest tribunal of Earth, which is the guarantor and guardian of "Equal Justice under Law."

It is this grievous inroad upon the fundamentals of blood-bought Religious Freedom that caused thousands of Kansans, over their signatures, to exercise their sacred right of petition for grievances and, through the Counsel in the instant case, at Topeka, Kansas, on October 6, A. D., 1952, pleaded for the RESTORATION of Constitutional Religious Freedom to Kansas and of autonomy, self-government and MAJORITY rule to Kansas Baptist Churches, which the Kansas Supreme Court still denies them.

> "As was written concerning a Baptist Church by Judge Logan, in *Thomas* v. *Lewis*, 224 Ky. 207 (6 S. W. 2d 255, 258):

'Such a congregation is a pure democracy, and, as long as it is a local church functioning under its own laws and regulations, * * * no power may interfere with the authority of the local congregation so exercised. The *minority* is *always bound* by the *majority.*' " * * *

Also cited: *Parker* v. *Harper,* 175 S. W. 2d, p. 363, pars. 2 and 3; *Oliver* v. *Hamrick,* 131 S. W. 2d 375 (Mo., 1939); *Cooper* v. *Bell,* 106 S. W. 2d 124 (Ky., 1943); *Barechelle* v. *Trustees,* 194 Atl. 100 (Del. Ch., 1937); *Crenshaw* v. *Muse,* 118 S. W. 2d 631 (Tex. Civ. App., 1938); *Bailey* v. *Washington,* 185 So. 172 (Ala., 1939); *Van Vliet* v. *Vander Naald,* 287 N. W. 564 (Mich., 1939); *Kidwell* v. *Crawford,* 182 S. W. 2d 968 (Ky., 1944); *Turbeville* v. *Morris,* 26 S. E. 2d 821 (S. C., 1943); *Davis* v. *Turner,* 148 S. W. 2d 256 (Tex. Civ. App., 1941); *Woods* v. *Humber,* 282 S. W. 837; *De Loested* v. *Hilson,* 235 N. W. 340 (Mich., 1931); *Hopson* v. *Swanzy,* 1 S. W. 2d 419 (Tex. Civ. App., 1928).

PROPOSITION III. The Supreme Court of Kansas further failed to observe the guarantees of Articles V and XIV of the United States "Bill of Rights," forbidding taking of property without "due process of law" by affirming a trial Court judgment brought, not by the Argentine Baptist Church, as a religious Corporation, through its legal trustees (as required by Kansas Constitution in Article XII, Section 3, thereof), but by a minority group, already defeated by customary vote of a faithful Baptist majority voting in the Argentine Baptist Church; that such ouster of majority took from them their proportionate group equitable interest in the church's property and assets in contravention of law, although no property trust, express or implied, had been violated.

Argument and Authorities.

These petitioners submit that they who were the voting majority of the members of the Argentine Baptist

Church, who still adhere to every basic Baptist doctrine of the church, although now excluded from membership therein by the trial judge's "perpetual" injunction (Ab., pp. 25-26); that, though voting to sever Northern (now American) Baptist Convention connections they have not changed their Baptist doctrine in any particular.

Their property rights or congregational interest (or group equity), as members have been taken away by the decision of the Kansas Supreme Court in affirming the action of the Trial Judge in the instant case. They were discriminated against and denied equal protection of the law as allowed the rebellious and *"doctrinally unfaithful" minority* (the respondents herein) in violation of the Articles V and XIV of the "Bill of Rights" of the United States Constitution.

In determining the status of a church's property, the United States Supreme Court (in *Wallace v. Jones*, Vol. 80, 13 Wallace Reports (in an appeal from the Circuit Court of Kentucky, May, 1869) in the syllabus (page 680, par. 5) submits that if the society (or church) own the property, have a congregational or independent form of church government, owing submission to no other organization outside the Congregation. In such cases, with respect to the church's property "this is to be determined by the majority of the society (such as a Baptist Church), or by such organization of the society, as by its own rules, constitute its government" (p. 680, par. 8).

"If the right of property is dependent on church law, rule, custom or church government, and it has been decided by the highest tribunal (or authority) within the organization, the Civil Courts will accept the decision as conclusive" (Syllabus, par. 10).

The American cases sustain the principle above stated because of Separation of Church and State in this Country and the United States Constitutional guarantees.

A MINORITY is able to overthrow the action of the MAJORITY in a Baptist Church ONLY when the *Minority* holds faithfully to the basic doctrines while the *majority* is *radically departing* therefrom and, in effect, is *repudiating* former basic religious doctrines.

The right of a faithful MINORITY in a Baptist Church to invoke the civil courts' equitable powers of injunction and hold that church's property as against the contrary vote of the MAJORITY of the members of such church is fully set out in *Mt. Zion Baptist Church et al.* v. *Whitmore et al.* (an Iowa Supreme Court decision dated: June 1, 1891), 83 Iowa 138, 49 S. W. 81-86.

The facts setting forth the reason for the ruling therein show there were two factions in such church, one standing for the basic fundamental age-old Baptist doctrine and teaching, and the other insisting upon a change in the church's creed and the substitution of the "Holiness" church's doctrine of "Sanctification" by a "Second Experience" (so-called "Second Blessing") or "Sinless perfection."

Justice Granger said:

> "The power to govern the church gives no power to change the church or the faith and covenants that fix its character. The property of this church is *the common property of all its members* and each has such an interest therein that he may insist that it shall be devoted to the religious faith *for which it was given.*"

PROPOSITION IV. The Kansas Supreme Court by permitting invasion of the affairs of and autonomy of the Argentine Baptist Church denied the majority members thereof (the petitioners herein) "equal protection of the law" as required by Article XIV of the United States "Bill of Rights," forbidding them the Constitutional right to introduce and present proper evidence for themselves and against the parties suing them; such as refusal to allow original wire-recordings of the meeting of March 20, 1950, introduced or to show how defendants (appellants) had "kept the faith" and Baptist doctrines and how the plaintiffs (respondents) had "departed" therefrom.

Argument and Authorities.

The refusal of the Trial Court to give equal consideration to the Majority of the members of the Argentine Baptist Church and "those similarly situated," and to show favor and bias to the Minority group, by refusing to let it be shown, by evidence tendered, that the Minority had "departed" from true Baptist doctrines, thereby preventing the defendants (petitioners) from presenting their relevant and material evidence, was a violation of their rights under Amendment XIV to the U. S. Constitution.

(For proof, see Ab., pp. 77-78 (301-2); Ab. p. 88 (455)-90 (457); Ab., p. 105 (502)-105 (503).)

The overruling of the defendants' (petitioners') demurrer (Ab., p. 82 (378)), the order to such being set out in Ab., p. 22.

This demurrer set out that the main question was whether the defendants (petitioners) "had departed from the doctrines of the Baptist Church, and whether the (Trial) Court, in taking jurisdiction, had VIOLATED the Federal Constitution guaranteeing FREEDOM OF RELIGION (the FIRST and FOURTEENTH Amendments

thereto)" * * * (thus first raising these Constitutional questions) "and that cases of the instant kind when decided by the Supreme Court of a State (in this instance Kansas) are to be governed by the United States Supreme Court" (70 A. L. R., p. 71). Also, see Ab., p. 82, through (375), with pertinent excerpts from Closing Argument of C. W. Brenneisen, Jr., of defendants' (petitioners') counsel (Ab., pp. 145-6).

The demurrer cites the offer of the defendants (petitioners) to hold another election as a means of settling the said church's differences (Ab., p. 82, 374 and Ab., 145, lower half of page).

The Kansas Supreme Court erred in not reversing the trial judge's decision in the instant case, for suppressing the wire recordings of the meeting of March 22, 1950 (Ab., pp. 86-87 (423-429)). Such "recordings" are held to be admissible in: Am. Juris., Vol. 20, Sec. 258, p. 249; also, *ibid.*, p. 333 (Sec. 265); *Shawver* v. *Chamberlain*, 113 Iowa 742; *Missouri P. R. Co.* v. *Heidenheimer*, 17 S. W. 608; *Oscamp* v. *Godsden*, 45 Neb. 7 (17 L. R. A. 440); *State* v. *Minneapolis Milk Co.*, 124 Minn. 34; *Boyne City* v. *Anderson*, 146 Mich. 328.

PROPOSITION V. The Kansas Supreme Court erred in affirming the decision of the Trial Judge in the instant case, whereby, by his civil fiat, he struck down the sacred right of each member of the majority of the said church to worship God, at the time, place and in the manner dictated by their conscience of each, as guaranteed by Article 1 of the United States "Bill of Rights," forever separating Church and State in this republic, and even, in like manner, striking down the same blood-bought rights of the minority, making the Argentine Baptist Church over to suit the trial Judge.

Argument and Authorities.

The right of a state to legislate in effect to "mix" Church and State is ably and exhaustively dealt with in the cause of *Kedroff and Fedchenkoff* v. *Saint Nicholas Cathedral of the Orthodox Russian Church in North America* (in opinion by Mr. Justice Stanley Reed on November 24, A. D. 1952, with the Chief Justice and 7 Associate Justices concurring, with a supplemental opinion also by Mr. Justice Frankfurter). Under this ruling, a state has no right (in view of the FIRST and FOURTEENTH Amendments to the United States Constitution) to award the property of a church to the faction that is going contrary to the established government and doctrines of a "Mother Church" exercising jurisdiction over it. Therefore, no court in Kansas, we argue, can render any opinion nullifying the intent and letter of the said two Amendments without mixing Church and State which is forbidden under the United States Constitution. The adhering faction was held entitled to the use and possession of the church. In the instant case, that group would be the "faithful majority" of the Argentine Baptist Church, your petitioners herein.

Cases referred to by Mr. Justice Read's Opinion are: *Watson* v. *Jones*, 13 Wall. 679; *Saint Nicholas Cathedral*

v. *Kedroff*, 302 N. Y. 1-20 (which was reversed by the United States Supreme Court); *Zeltman* on "American Church Law" (19-33, C. A.); *Shepard* v. *Barkley*, 247 U. S. 1; *Barkley* v. *Hughes*, 208 Fed. 319, 326; *Mo. ex rel. Watson* v. *Farris*, 45 Mo. 183, 197-8; *McGinnis* v. *Wilson*, 41 Pa. State 1; *Grayson* v. *Harris*, 267 U. S. 352; *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95; *Hamilton* v. *Regents*, 293 U. S. 245, 262; *Eversen* v. *Board of Education*, 330 U. S., pp. 1, 14, 15; *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 210-11; *Zorack* v. *Clausen*, 343 U. S. 306, 310; *Gibson* v. *Armstrong*, 7 B. Monro., p. 481; *Attorney General* v. *Pearson*, 3 Merivale 353; *Hubert* v. *Louisiana*, 272 U. S. 312, 317.

If, therefore a church has *autonomy*, the civil law cannot take it away by statute or court edict; nor can it be made subject to any ecclesiastical group, if it is, by basic doctrine, traditions, customs, usages, etc., independent and congregational in form of church government.

PROPOSITION VI. That the Kansas Supreme Court erred in approving the Findings of Fact of the Trial Judge in the instant case, because the Trial judge willfully suppressed material evidence, properly and legally tendered, by counsel and witnesses of defendants (appellants) in open court, manifested undeniable bias, and assumed to be the judge of the law, without the facts thereby depriving them of a valuable right of a jury trial to determine the truth on the issues pleaded, all in violation of the guarantees vouchsafed in Article VII of the United States "Bill of Rights."

This is substantially covered by Proposition IV, above.

PROPOSITION VII. The Kansas Supreme Court erred in affirming the conduct and ruling of the trial judge, who deliberately took over the sacred, congregational business of the Argentine Baptist Church, and "fired" Pastor Fehsenfeld, who was under proper, legal, unexpired contract as pastor of said church, which included not only his services, at stated salary, but included, to the end of his contractual term (several months later), his living quarters in the said church's parsonage, from both of which he was ousted, at the Trial Judge's whim at the disgruntled, rebellious minority's behest—all in violation of the United States Constitution, Article I, Section 10, par. 1, forbidding by law any impairment of obligation of contract.

Argument and Authorities.

The Kansas Supreme Court, by offering the trial judge's kicking out Pastor Fehsenfeld by a rebellious minority, after he had been re-approved by the majority's vote on March 22, 1950, in effect, is condoning what your petitioners urge as a deliberate impairment of obligation of contract, forbidden by Article I, Section 10, Par. 2.

PROPOSITION VIII. The Kansas Supreme Court, by the ruling that a Baptist Church's voluntarily severing or changing its prior "Convention" connections, is a Change of Doctrine, is an invasion of the Religious Authority of the Baptist Church itself, Biblically and by Baptist tradition, usage and practice; it being also tantamount to the Kansas Supreme Court's arbitrarily rewriting centuries-old Baptist Doctrine, and, in effect is a gross violation of Article I of the United States Constitution, guaranteeing Religious Freedom and Separation of Church and State.

Baptist doctrines are basically and fundamentally that denomination's interpretation of Holy Writ, which they

believe to be "God's Inspired Word," and that the Scriptures, in their *original* form, are without error.

Baptists have shed their blood, through the centuries to prevent edicts of civil law and man-made legislation from interfering with the liberty bought by Christ on Calvary's Cross for all mankind's redemption.

Baptists assert their right, voluntarily by a *majority* vote of their members, to affiliate with or withdraw from any group, association or "convention" to affiliate with such, as the individual, local Baptist Church votes to join, or to abstain from any such possible affiliation and remain INDEPENDENT. They "co-operate" for Missions or other denominational purposes, without surrendering any of their autonomy, self-rule or individual "church sovereignty."

Baptists insist on their right to withdraw, and assert that such withdrawal is NOT a change in doctrine, nor a *departure* from the basic Baptist faith (See Appendix B of this Brief, for general Baptist "doctrines," etc.).

If they "changed" their doctrines by withdrawing, they would forfeit their property to a "faithful" minority. As to "withdrawal" by *majority* vote, see the record herewith: Ab., p. 98 (471)-p. 99 (478); Ab., p. 100 (487)-p. 101 (489); Ab., p. 103 (494)-p. 104 (496); (Nixon) Ab., p. 117 (615)-p. 118 (622).

Your petitioners cite the following decision by the Supreme Court of Iowa, on January 8, 1952, the same Court which proclaimed the doctrine of the "faithful" minority, hereinbefore set out, over 60 years ago, in *Mt. Zion* v. *Whitmore*, 83 Iowa 138, 49 N. W. 81.

In *Keith et al.* v. *First Baptist Church of Algona, Iowa, et al.*, (N. W. Reporter, 2nd Series, Vol. 50, pp. 803-809)

which was a suit by L. W. Keith and others, a minority faction in a Baptist Church against the First Baptist Church, Algona, Iowa, to enjoin an amendment passed on May 3, 1948, by a majority vote of 77 to 65, after due notice, as provided for in the Articles of Incorporation of said church withdrawing co-operation previously given by that church to the Iowa Baptist convention (since 1870) and the Northern Baptist Convention (since 1910).

The opinion (dated January 8, 1952), with no Justice of the Supreme Court of Iowa dissenting (and all but one Justice present) holds:

Below appear excerpts from such far-reaching Opinion and Ruling of the Supreme Court of Iowa, in the case of *Keith et al.* v. *First Baptist Church of Algona et al.*, 50 N. W. 2d 803, that Convention *withdrawal* is not a *doctrinal* "departure" or "change" in basic Baptist faith:

> "IV. *Our first reaction is the utter* futility of any *court decree to compel a local church* 'to continue in that *cooperation.*' We learn from the testimony of plaintiffs' ministers that the Iowa State and Northern conventions are voluntary associations. The Iowa State Convention consists of *cooperating Baptist Churches* in this state and the Northern Convention consists of *cooperating state conventions.* Through these conventions flow the enthusiasm, labor and money, necessary for the advancement of the Baptist faith at home and abroad. Perhaps it is not quite true to say a church 'belongs' to a convention because, as plaintiffs' witnesses pointed out, the centuries old freedom of the local Baptist Church could not be impinged by a convention association. * * *
>
> * * * "The Articles of Incorporation of the Northern Baptist Convention (which was formed in 1910) provide in Article I: '*Membership*: The constituency of the Northern Baptist Convention shall be in all Baptist Churches in the United States *which cooperate*

in its work' and other articles provide any state convention can become an 'affiliating member.' The Iowa State Convention is, by its articles of incorporation, made an affiliating member of the Northern Convention. There has been a decrease in the number of churches cooperating with the conventions over the past years. The year book of the Northern Baptist Convention shows 13,245 Convention Churches in 1913 and about 7,000 in 1947.

"* * * In reality, plaintiffs, by arguing 'a right to continue in that (convention) cooperation' that has existed in the past, are arguing the local church can be compelled to send delegates to all future annual meetings of the conventions.

"A Baptist church is a pure democracy. It is *controlled by its own membership*, and it is *absolutely independent of any external control*. It is *not subject* to any *supervisory* power, *ecclesiastical or otherwise*. The ministers who testified for plaintiffs were emphatic in their statements as to the complete independence of the local church. They stated: 'The Baptist church has been spoken of as the truest of Demoracies, in that the majority in a Baptist Church may determine definitely what the policy of that particular church will be as to affiliation * * * The whole picture, the whole gist of the thing, and the whole basis for the Baptist denomination, is *the individual church*, but its *majority* vote is *supreme* * * * From the beginning the Baptist Church has *retained and refused* to give up *its independence*.

"The general rule is *that a church with a congregational form of government can by majority vote withdraw from a voluntary affiliation and make a new one*. 8 A. L. R. 123; 70 A. L. R. 86; *Booker* v. *Smith*, (Ark.) 214 S. W. 2d 513; *Honey Creek Regular Baptist Church* v. *Wilson*, (Ohio) 92 N. E. 2d 419; *Ennix* v. *Owens*, (Ky.) 271 S. W. 1091; *Manning* v. *Yeager*, (Ala.) 82 So. 435; *Calvary Baptist Church of Port Huron, Michigan*, v. *Shay*, (Mich.) 290 N. W. 890; *Kemp* v. *Lentz*, (Ohio) 68 N. E. 2d 339.

> *"A church does not need to be a member of any association or group to be a Baptist church* * * * A church * * * which chooses to have *no ties* with the association may *still* be a Baptist Church. There would be nothing in the organization that keeps them from being a member of the Baptist denomination."

Thus must now appear the error of the Kansas Supreme Court in affirming what petitioners assert is the necessity for UNANIMOUS vote for withdrawal (Finding of Fact 2, Ab., p. 23); also the case was reversed.

Other pertinent cases examined are: *Kemp* v. *Litz*, 68 N. E. 2d 339-41 (Ohio, 1943, Ct. of App.); *Calvary Baptist Church of Port Huron, Mich.*, v. *Shay et al.*, 290 N. W. 890; *Immanuels Gemeinde* v. *Keil*, (1899) 61 Kan. 65; *Huffins* v. *Sheriff*, (1916, Okla.) 162 Pac. 491; *Miller* v. *Goble*, (1845) 2 Denio, N. Y. 492 (as set out in 8 A. L. R. 123); *Manning* v. *Yeager*, (1919, Ala.) 82 So. 485; *Ennix* v. *Owens*, (1925) 209 Ky. 19, 271 S. W. 1091 (See A. L. R. 70, p. 86); *Cape* v. *Moore*, (1927) 253 Pac. 506, 122 Okla. 229 (70 A. L. R. 87); *Booker* v. *Smith*, (Ark. S. Ct.) 214 S. W. 2d 513; *Elston et al.* v. *Wilborn et al.*, (Ark. S. Ct.) 186 S. W. 2d 662-3 (1945); the obvious error of that august tribunal in holding in their opinion of November 8, 1952, herein complained of, that a change of "convention" affiliation is a "change" in basic Baptist doctrines. It would appear that the Kansas Courts have been encouraged to enter the "no-man's land" of church interference by civil edicts, in contravention of the aforesaid United States Constitutional guarantees.

The twelve (12) "Specifications of Errors," set out in the petition are, in substance covered by the arguments and authorities set forth in the eight (8) propositions herein, with the specific objections to the Findings of Fact, entered by the trial judge and affirmed by the Kansas Supreme Court being set out *ad seriatim* in "C," of the Appendix at the end of this brief.

CONCLUSION.

From the foregoing, these petitioners, through their counsel of record, respectfully aver that the Kansas Supreme Court, by its affirmance of the judgment of the Trial Court below, has condoned and, as the highest State Court of Kansas, has exercised what, we urge, is an UNCONSTITUTIONAL power, and by their interference with the Kansas Baptist Churches, representing millions of American men, women and children and tens of thousands of churches in our land and country has, in effect, violated the above recited provisions of the United States Constitution and its "Bill of Rights."

Wherefore, it is respectfully submitted and prayed that this Petition for a Writ of Certiorari to review the decision of the Supreme Court of Kansas be granted.

Respectfully submitted,

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May 8, A. D., 1953.

APPENDIX A.

Definition of Terms at Issue.

(1) *DOCTRINE* (or CREED) (in *"Words and Phrases,"* Vol. 36, p. 789): A "religious creed is the *common* belief of a religious sect." *Each* sect has a creed which necessarily *excludes* ALL others. What makes it a "CREED" (or Doctrine) is the fact that it is the *COMMON* BELIEF of the sect; *NOT* its length or its brevity. It would be *impossible* to have a sect or DENOMINATION unless there were at least SOME ONE GROUND on which they BELIEVED, and, so far as there was a COMMON belief, just *so far* they MUST HAVE a CREED or COVENANT—and the case is not changed whether the CREED have ONE article of Faith or SEVERAL. A Man's "CREED" is—*WHAT HE BELIEVES* (*Hale* v. *Everett,* 53 N. H. 91, 92, 16 Am. Rep. 82).

The present Argentine Baptist Constitution (in Article IV, Section 1, cited *supra* (Ab., p. 32)) specifies that MEMBERSHIP is extended to those "whose interpretations are in *GENERAL* ACCORD with those of THE BAPTIST DENOMINATION * * *."

Thus *Belief, Creed, Faith and Tradition* ALL enter in. The purpose of such a MEMBERSHIP basis or requirement is to bring about *"GENERAL* ACCORD"—based on a COMMON, GENERAL or FUNDAMENTAL BELIEF.

This seems uncontradictable then, does it not, that Judge McHale misinterpreted the 2nd paragraph of "Admission 19," in the "Agreed Pre-trial Statement of Facts" (Ab., p. 59) as meaning that the Argentine Baptist Church was "A LAW UNTO ITSELF," and that it had an IN-

DIVIDUAL BAPTIST Doctrine, Creed, Belief and Faith —with "distinctions" NOT COMMON to Baptists GENERALLY, thus tossing aside the only "measuring rod" by which to determine that Church's Biblical, New Testament Orthodoxy and test its fealty to the COMMON faith and practice as set out in those principles of BAPTIST belief in 6(a) to 6(i), of the Defendants' Answer on pages 11 and 12 of this Abstract.

(2) *TRADITION* (in *"Words and Phrases,"* Vol. 42, p. 218) is defined as *"Knowledge, belief or practices, transmitted orally* from father to son or from ancestors to posterity (*In re Hurlburt's Estate,* 35 Atl. 77, 81, 68 Vt. 866, 35 L. R. A. 794). The word, "Tradition," in common sense and in law, *must mean* that which is derived from the declarations of those who live or were living at a time, if not ancient, *comparatively remote.* (*Westfelt* v. *Adams,* 42 S. E. 822, 131 N. C. 379).

(Note: In the instant case, the knowledge, belief or practices of the Argentine Baptist Church 35 years prior to 1950, as Rev. Alvin G. Hause knew them on or about A. D., 1915, is very essential in determining the "traditions" of that church (Judge McHale to the contrary notwithstanding (Ab., pp. 94-96, Tr., pp. 464-467)).

The "modernistic" designation of the "Office of DEACONESS" in the Argentine Constitution of 1947, herein cited as an Exhibit, would be a radical DEPARTURE from original Baptist TRADITIONS, especially, because such an "office" has no foundation nor justification in the New Testament nor the traditions or belief of *the Baptist* Denomination.

(3) *CUSTOM* (in *"Words and Phrases,"* Vol. 10) "refers to those usages which have been recognized so long as to be binding without the assent of the individuals,

and must have been so long as to acquire the force of law (*Byrd* v. *Beall*, 43 So. 749, 751 (also 12 Cyc., p. 1033)).

It must be *certain, ancient, uniform, compulsory, consistent, general continued* and so notorious that persons of reasonable prudence, by the exercise of ordinary care, had acted upon it (*Gerseta Corporation* v. *Silk Company*, 222 N. Y. S. 11, 13).

Thus the changing of literature, from Northern Baptist to Interdenominational, the electing of Deaconesses and the changing administrative details, at any time by the Argentine Baptist Church interrupted the *custom* prevailing up to that time. *Frequency* of an act being done does not make it a "custom" from a legal standpoint (*Adich* v. *Cramyle*, 59 S. W. 2d 560).

(4) *USAGE* (in "Words and Phrases," Vol. 10, p. 730) refers to an established method of dealing, adopted at a particular place, by those connected therewith which acquires *legal force* because people are led to make engagement dealing therewith (*Byrd* v. *Beall*, 43 So. 749, 751 (12 Cyc., p. 1033)).

Thus, by voting to try Southern Baptist Literature and Sunday school methods, after open discussion and Baptistic committee action and recommendation, the plaintiffs had interrupted and voluntarily changed their own former *custom* and *usage* of not using such literature.

(5) *PRACTICE* (in "Words and Phrases," Vol. 33, p. 179) refers to "an act oft repeated by the same persons, and means action by which something is done or performed (*West* v. *Sun Cab Co.*, 160 Md. 476; *Wingfield* v. *South Carolina Tax Commission*, 147 S. C. 116). In law, "practice" does NOT mean "custom" (*Collins* v. *Chicago & N. W. Ry.*, 136 N. W. 628, 630). Thus the calling for meetings to "kickout" Pastor Fehsenfeld was a "practice"

of the Plaintiffs and their faction of the Argentine Baptist Church (as on March 22, 1950, and May 3, 1950).

(6) *DEPARTURE* (in "Words and Phrases," Vol. 12, p. 81) is defined as "a deviation or divergence as from a *standard* rule or measurement" and "idea" was a conception of what is desirable, or ought to be, different from what *has been observed* (*Hamilton Mfg. Co.* v. *Tubbs Mfg. Co.*, 216 Fed. 401, 409).

Thus "departure" means an *abandonment*—or going in the *other* direction or point of previous starting or progress. Thus the Argentine Baptist plaintiffs DEPARTED from their Covenant, their Constitution and the "ordinances of God" (particularly, 1st Corinthians 6:1 through 8) when they (1) *sued herein*, in a Court of Civil Law, rather than submit their differences to traditional, historic, Biblical Baptistic methods of arbitration and settlement, as proposed by the Defendants herein; (2) when they refused to be governed by open, fair, free Baptistic Autonomy, Congregational democracy and the age-old *custom, usage and practice* of the MAJORITY Vote; and (3) by conducting a "slanderfest" and irregular unconstitutional meetings to try to oust, discredit, defeat, humiliate and drive away their duly elected Pastor, Rev. Del A. Fehsenfeld.

APPENDIX B.

Baptist Doctrines, Tenets, Customs, Usages, Traditions and Practices.

Following are the Biblical, basic, fundamental, historic Baptist Doctrines (compiled from the complete "Declarations of Faith" of both Northern (American) and Southern Baptist Conventions), and the usages and principles of Baptists generally:

1. The New Testament is *the constitution of* Baptist Churches and the *only authoritative code* of ecclesiastic law for Baptist churches.

2. Pastors are *not* to be imposed on Baptist churches nor taken from them *without their consent,* but are to be chosen by them, each church for itself, at *its own option.*

3. Each particular local Baptist church is *self-governing and independent of all other churches* and of *all* persons and bodies of men *whatever* as to the administration of *its own affairs.*

4. A Baptist church is *not* a confederation of many local congregations under one head, such as a Bishop, Pope, or Synod.

5. Persons received into membership in a Baptist church have *equal rights* and *immunities* with any and all *other* members of the church *unless,* for cause, *they are under discipline.* The Baptist churches have a right to exercise *a watchful supervision* over their members of the individual church to decide *whether or not* a member is *unworthy.*

6. A Baptist church has authority to *discipline* or *withdraw fellowship* from one proven to be unworthy, and it is the right of *the members* of the individual church to decide *whether or not* a member is unworthy.

7. There is *no* power that can *compel* a Baptist church to accept a pastor or a pastor to accept a church. The relation is formed by *mutual agreement* between them and, when once formed, the relation *cannot be dissolved by external* authority, *civil or ecclesiastical.*

8. Deacons are officers of a church. They are to act as *counselors* and *assistants of the pastor,* but have *no direction* over the pastor. *Only the Church has direction over the pastor.*

9. Each particular and individual Baptist church is *actually* and *absolutely independent* in the exercise of *all* its churchly rights, privileges and prerogatives, independent of *all other* churches, individuals, and bodies *of men whatever,* whether state or sectional Baptist Conventions, Northern, Southern, National, American or otherwise.

(Note: The above are incorporated fully in the Defendants' Answer (Exhibit "6" of Defendants) (Ab., pp. 9-12), and appear numbered 6(a) to 6(i) inclusive in Ab., pages 9-12. That such are correct doctrines, usages and customs of Baptists was testified to, in detail by expert witnesses of the defendants: (1) Rev. Alvin G. Hause, of the Central Baptist Seminary (Northern and Southern) of Kansas City, Kansas (Ab., pp. 87-95, Transcript, pages 401-465); (2) Rev. N. J. Westmoreland, Executive Secretary of Kansas Convention of Southern Baptists (Ab., pages 104-105, Transcript, pages 496 to 500).

APPENDIX C.

Errors in the Trial Court's "Findings of Fact."

(Note: Those "findings" set out below were specifically set out in defendants' motion to set aside Findings of Fact (Ab., page 26) and in Defendants' Motion for a New Trial (Ab., page 27), reviewing, as Appellants and Cross-Appellees, every reason set forth in both said motions in full. The Findings Complained of here are contrary to the preponderance of the evidence.)

Finding No. 2 is in error because: There is "no competent evidence to show that a UNANIMOUS Vote is necessary for the Argentine Baptist Church to withdraw from the Northern (American) Baptist Convention, the Kansas Baptist Convention or the Missouri River Association. The undisputed testimony of *Rev. Randle R. Mixon,* an expert on Northern and Kansas Baptist Convention relation and customs (himself a hostile witness but called by Defendants) shows such is NOT TRUE, but that A MAJORITY Vote is sufficient (Ab., pages 117-119). This is also the expert opinion of Rev. Alvin G. Hause, defendants' witness (Ab., pages 98-99) (covered in Transcript, pages 471-473) (and also in Ab., pages 99-100, covered by Transcript, pages 478-487).

Findings Nos. 3 and 5 are in conflict. Findings Nos. 5 and 6 disregard the expert testimony of defense witness, Rev. Alvin G. Hause declares that "*a Baptist Church, in my opinion has a perfect right to change its program, its methods of work and its plan*" (Ab., page 88). The Transcript (p. 457, lines 6-13) shows that such Answer by Rev. Hause was NOT stricken (Ab., page 90).

Finding No. 4 is not correct that the action of March 22 and March 26, 1950, a violation of the doctrines of the Argentine Baptist Church for no changes were recommended in the original basic belief of that church and of all Baptist Churches true to the faith, but was merely a rearrangement of the Church's program, plan and method of work, as set out in the Argentine Baptist Church's constitution, Article II, Section 4, reading: "By encouraging whatever other work for our Lord the members of the Church may desire to unite in undertaking."

Finding No. 7 is challenged because defendants have by an overwhelming preponderance of evidence, of a most positive and unequivocal nature from defendants and their witnesses, expert and otherwise, established that: (1) Rev. Fehsenfeld has not set himself up as the "only head of the Argentine Baptist Church" (Ab., pages 127-128); (2) Rev. Fehsenfeld does not advocate that all persons belonging to secret orders and lodges should not be permitted membership nor to hold office in churches (Ab., 129-130); (3) he has never advocated church discipline of members by him, and when some of the majority wanted to exclude some members for their attitude, actions and conduct, he suggested just "withdrawal of *fellowship" for a time,* and not membership (although the Argentine Baptist Church Constitution in paragraph 2, of Article III (Ab., page 31), provides for sustaining the DISCIPLINE of the Church and Section 2, of Article IV (Ab., page 32) provides for severance of membership by EXCLUSION, and NOT by the less harsh method of WITHDRAWAL OF FELLOWSHIP, as favored by Rev. Fehsenfeld and as authorized on March 22, 1950, by A MAJORITY Vote of the members of the church present on that occasion, giving recreant members merely a temporary SUSPENSION, pending a change of attitude (Ab. 125). That fel-

lowship can be withdrawn without loss of membership corroborated by Rev. N. J. Westmoreland (Ab. 107); (4) Rev. Fehsenfeld and his co-defendants never refused to permit Santa Claus to be exhibited in the Argentine Baptist Church (Ab. 125). That corroborating and sustaining the testimony of Rev. Fehsenfeld is the testimony of every witness testifying for the defendants (See Ab. 82-139).

Findings Nos. 8 and 9 are closely interrelated. The *only* testimony in support of the trial Judge's declaration in both these "findings" that suggest any such agreement to hold the church's "annual business meeting" on May 3, 1950. Attorneys, Sullivan and Brenneisen, for the defendants, testified, under oath, to the contrary (Ab. 52-53). Plaintiff, Malloy S. Hogeman corroborated this testimony (Ab. 79), stating that Mr. Brenneisen stated at the church, on Friday, April 28, 1950, "It is not exactly next Wednesday (May 3, 1950) but in the immediate future."

Finding of Fact No. 10 is contrary to the evidence offered by the Defendants and their witnesses in contradiction of Plaintiffs' allegations in Paragraph 13 of their Amended and Supplemental Petition (Ab. 6-8), because:

(1) NO changes in the church's doctrines and traditions were made, after Rev. Fehsenfeld became pastor, and the plaintiffs produced *NO EVIDENCE* of such at the trial.

(2) Rev. Fehsenfeld, at his first interview with the Pulpit Committee, prior to their call to him to be their Pastor (July 31, 1949), went fully into his views. All matters (now used by the plaintiffs as "charges" against him) such as the Sunday School Methods and literature of Southern Baptists, the Church's "dual" disposition of

Missionary funds (and the squabble then going on in the Argentine Baptist Church over same); possible funds to the Federal Council of Churches; the pastor's pension fund; "mixed" Sunday School classes, and all other matters now made "a tempest in a teapot" in this litigation (Ab. 119-123, Tr. 629-642).

(3) To be sure there would NOT be any misunderstanding that might breed conflict, in August, 1949, before accepting the Church's call as Pastor, Rev. Fehsenfeld asked for another interview, and went into everything fully again (as on July 31, 1949) (Ab. 123-124, Tr. 643-649).

(4) He testified that he never tried to kick any member out, even suggesting probationary *withdrawal of fellowship,* when some members wanted those who had unconscionably mobilized and fought their pastor, *expelled* (under the Church's Constitution) and Rev. Fehsenfeld gave fully (Ab. 125, Tr. 657-606) his views on FELLOWSHIP (all of which were corroborated by Rev. Westmoreland) (Ab. 107) and John Wilkes (defense witnesses Wilkes being also a defendant) (Ab. 114-115) and John Wildman, a plaintiff's witness (Ab. 76).

(5) Rev. Fehsenfeld further testified (Ab. 130, Tr. 668-694). that the church accepted Southern Baptist Sunday School set-up and literature, on vote of the Church, after the Committee reported; and that he never said the things charged to him about the pastor being "boss," "lead your dirty lives," "I call down wrath of God" and other false charges (Ab. 695-818).

Finding No. 11 is contrary, like as the foregoing Findings, to the evidence. The Argentine Baptist Church was organized as a "regular" orthodox, Baptist Church, based on the teachings, ordinances and traditional principles,

practices and usages of "The Faith once delivered to the saints." Rev. Fehsenfeld merely urged the members to return to "separated" lives, lived, in practice, according to God's word, teaching and preaching the Bible.

This the minority faction (the plaintiffs and their sympathizers) admitted (Ab. 87, Tr. 431). But they winced under his attacks on SIN and worldliness, and on specific SINS, such as dancing, card-playing, drinking, social excesses or making a "Roman Holiday" of religious professions. His preaching was NOT a DEPARTURE. It was a "calling back" from *existing* DEPARTURES in many of the Church's minority members' attitude and practices. He had not been "discharged as minister," but bodily "booted out" by "Billingsgate Methods" (Wing's testimony) (Ab., 69-71, Tr. 105, 122, 130) at a meeting (on May 3, 1950) that were irregular, unconstitutional, as protested by Defendant, V. A. Vance (Ab., 76, Tr. 266). There was no evidence to indicate defendants were planning to confiscate and/or misappropriate the church's funds and property, and no factual basis for asking for "injunctive relief."

In *Finding No. 12*, the trial Court FINDS that the contents of 6(a) to 6(i) inclusive (Ab. 11-12) are by a preponderance of the evidence *generally* the *"traditions, customs, doctrines and usages* of the Baptist Churches" (Ab. 24). If the Argentine Baptist Church is, in fact, A BAPTIST CHURCH, if it is *not following* such *fundamental, basic,* historic, Biblical doctrines, traditions, customs and usages, is ONLY because such church of itself, had DEPARTED from such *general* features of a Baptist Church, as it claims, in its Constitution (Article IV, Section 1), to be "in *GENERAL accord with*" (Ab. 33).

Yet each time any attempt was made by counsel for the defendants, to introduce evidence to show the Argentine Baptist Church DEPARTURE, Judge McHale would

refuse to permit such, as though such "Baptist" church had a brand of faith different from orthodox Baptist Churches, as:

As to *Finding No. 13,* the Court ignored the expert testimony of Rev. Alvin G. Hause, a defendants' witness (Ab. 88, Tr. 455-455), showing changes of an *Administrative* nature are not DEPARTURES from *basic* doctrines, customs and usages of Baptists.

The trial Court held in Finding No. 15, there is an irreconcilable conflict between plaintiffs and defendants. This is contrary to the "Agreed Pre-trial Statement of Facts," entered into between opposing parties to this lawsuit (Ab. 54-62), because *Denial No. 15* specifies: "That there is an irreconcilable conflict between plaintiffs and defendants," a flat contradiction of Judge McHale's Finding No. 15 (Ab. 61). Also, as soon as the plaintiffs had finished "firing" Rev. Fehsenfeld, as they thought, at the "rump" meeting on May 3, 1950, Al Slater moved that *fellowship be* CONTINUED with EVERYONE, and EVERYONE be *welcome to worship* at the Argentine Baptist Church, proving further that plaintiffs were "not mad at anybody" (Ab. 63, Tr. 156 and 157). It appears the plaintiffs and their adherents were "over promoted" into filing this lawsuit.

Judge McHale's *Finding No. 16* seems to be a "dodge" of responsibility for having accepted JURISDICTION in this cause. Of course, Attorney Braly and his plaintiffs and their confederates would not suggest to the trial Judge that the differences between the Argentine Baptist factions *might be settled* without filing suit for they were ANGRY at their pastor, wanted to discredit him, and were "itching, for the lawsuit and its radical publicity." A. D. Wing (a plaintiff) had said: "I said I would DO EVERYTHING I COULD to get him (Rev. Fehsenfeld) out of the Argentine Baptist Church" (Ab. 70, Tr. 122).